IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2724 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TEJAL RAJUBHAI CHAUDHURY - Petitioner(s)
Versus
DISTRICT COLLECTOR & 1 - Respondent(s)

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Appearance :
MR JV JAPEE for Petitioner(s) : 1,
MS KRINA CALLA, AGP, for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/08/2007

ORAL JUDGMENT

The petitioner herein runs a petrol pump. In the year 1995, on a surprise inspection check, the authorities found several irregularities. A show

cause notice,therefore, came to be issued on 2.6.1995 levelling several irregularities committed by the petitioner in running the said petrol pump. In the show cause notice, it is stated, inter alia, that on inspection quantity of diesel was found in excess to the extent of 7670 liters and petrol was found in excess by 625 liters. It was also alleged that density of the diesel was not as per the norms and that in the 5 liter can, the consumers were being supplied diesel/petrol less by 300 m.l. It was additionally alleged that proper records of the stocks were not maintained leading to the conclusion that the petitioner was indulging in mixing of the petrol and diesel and selling the excess quantity.

2. At the outset, it may be noted that ultimately, the Government did not accept the charge of density of the fuel not being as per the norms and the measurements being defective. Nevertheless, the charges regarding excess quantity of diesel and petrol was believed. It is also believed that the petitioner had indulged in mixing of the fuel with some other substance and selling the excess quantity in the market.

3. On the basis of the conclusions, after considering the objection of the petitioner, the Competent Authority, i.e. Collector decided to confiscate the quantity of diesel and petrol found in excess by the impugned order dated 21.7.95.

4. The petitioner preferred an appeal before the State Government. The State Government, however, substantially turned down the appeal of the appellant, nevertheless, held in favour of the petitioner so far as the inaccurate measurement is concerned. Eventually, the Government modified the order and directed confiscation of smaller quantity of petrol than that ordered by the Collector. This order was passed on 6.12.96. The petitioner has, therefore, approached this Court by way of this petition.

5. Having heard learned advocate Shri Japee for the petitioner and learned AGP Ms.Krina Calla for the respondents, I find that the orders under challenge do not require interference. As a matter of fact, it is found that the petitioner had indulged in several irregularities in running the petrol pump. Nothing has been pointed out to suggest that these findings are perverse.

6. It was contended on behalf of the petitioner that even as per the rules, 4 per cent variation in quantity is permissible. The show cause notice itself suggests that the quantity of diesel found in excess was after accounting for the variation permitted under the rules. Even otherwise, learned advocate for the petitioner is unable to establish that the quantity of diesel and petrol found in excess would be less than 4 per cent of the stock. The contention that the permissible excess should be

counted as 4 per cent of the total turnover of the petrol pump till date of inspection needs to be recorded only for rejection. No rule has been pointed out to establish this contention. More importantly, the petitioner himself has stated in the petition that variation permissible is upto 4 per cent of the tank stock.

7. It was next contended that the petitioner was not found to be indulging in black-marketing and that therefore confiscation of the entire quantity seized by way of punishment is harsh. Reliance is placed on a Division Bench judgement of this Court in the case of **Patel Ambaram Kuberbhai v. State of Gujarat**, 1998 (2) GLH 533 wherein the Court made the following observations:

> "10. So far as merits are concerned, prima facie, the learned counsel for the appellant is right that no finding regarding black-marketing or hoarding has been recorded nor such allegation was made. As observed by a learned Single Judge in M/s. Govind Karsan & Co. v. State, (1983) 24 (1) GLR 145, if there is no intention of black-marketing or hoarding on the part of the person committing breach of the provisions of the Order, the Court may exercise discretion by reducing the penalty."

I am afraid, the petitioner cannot seek benefit of the said observations. As discussed earlier, one of the charges against the petitioner was that he had mixed petrol and diesel with some other substance and sold the excess quantity in the market. This

charge is very much believed by the authorities below. When one of the elements of charge against the petitioner is adulteration, the petitioner cannot claim leniency. The above observations of the Division Bench are in entirely different background.

8. In the result, the petition fails and the same is rejected. Rule is discharged. Interim relief is vacated.

(Akil Kureshi, J.)

(vjn)